

New Hampshire Racing & Charitable Gaming Commission
Commission Meeting
Rockingham Park
August 25, 2009
09-12

Present: Timothy J. Connors, Chairman
Warren W. Leary, Secretary
Michael J. Gatsas, Member
Lynn M. Presby, Member
Anthony B. Urban, Member
Bernard A. Streeter, Member
Paul M. Kelley, Director
Sudhir K. Naik, Deputy Director
Steve Johnston, Supervisor Gaming Operations
Billie Jean Arseneault, Gaming/Licensing Supervisor
William Dewhurst, Sr. Auditor
Linda Glaser, Auditor
Shawn Graham, Auditor
Dale Childs, Racing Supervisor
Linda Darrow, Administrative Secretary

In Attendance: Rick Newman, James Rafferty, Karen Keelan, Attorney Daniel Mullen, Jeana Tribble, Marlin Torguson, Edward Callahan, Dr. Richard Sams and others.

The Chairman called the meeting to order at 11:00 a.m. A moment of silence was held for Justin Pellerin who was killed in action in Afghanistan on August 20, 2009. Justin was the son of Commission employee Melissa Farmer.

September 1, 2009 is the first scheduled meeting of the Governor's Gaming Study Commission. Chairman Connors asked that representatives from Racing & Charitable Gaming be present at all of these meetings.

The Chairman called for the scheduled hearings to begin.

Casino Game Rental

Attorney Daniel J. Mullen, counsel for Casino Game Rental, requested a continuance of the hearing in order to investigate this matter further. No objections were raised and the continuance was granted. The hearing for Casino Game Rental will be held at the next Commission meeting scheduled for September 28, 2009 at 11:00 in Concord.

Mr. Myles Lynch Hearing

Chairman Connors opened the appeal hearing requested by Mr. Lynch for the denial of his Secondary Game Operator License at 11:03 a.m. Mr. Lynch was sworn in by the Chairman, stated why he requested a hearing and answered questions posed to him by the Commission. The hearing closed at 11:06 a.m.

Decision & Order
Appeal of Myles Lynch
Secondary Game Operator License Denial

Findings of Fact

1. On July 10, 2009, Miles Lynch submitted a Secondary Game Operator Application for 2009.
2. On July 13, 2009, the NH Racing and Charitable Gaming Commission received a criminal background check for Myles Lynch from the NH State Police.
3. The NH State Police record of conviction indicted that Myles Lynch received a Class A Misdemeanor on May 11, 2004 on the charge of Obstructing Report of Crime or Injury 642:10.
4. By letter dated July 15, 2009, the Commission notified Myles Lynch that his secondary game operator license application had been denied based on the record received by the Commission from the NH State Police.
5. The Commission received an appeal form from Myles Lynch on July 31, 2009.
6. On August 3, 2009, a hearing notice dated August 3, 2009 was sent regular and certified mail to Myles Lynch notifying him that an appeal hearing would be held on August 25, 2009 regarding the denial of his secondary game operator license.
7. On August 25, 2009, the Commission held an appeal hearing regarding the denial of Myles Lynch's application for a secondary game operator license.
8. Myles Lynch provided testimony at the hearing stating that:
 - a. The May 11, 2004 charge was a result of a domestic dispute between Mr. Lynch, his then current, now former wife and the wife's alleged boyfriend.
 - b. Mr. Lynch pleaded guilty on the advice of his lawyer.
 - c. Mr. Lynch was not required to pay any fines or restitution.
 - d. Mr. Lynch believed that the charge was a Class B misdemeanor.
 - e. There is not, and never has been any type of restraining order against Mr. Lynch.
 - f. Mr. Lynch has joint custody of his children, having them in his care 3 or 4 days per week.
 - g. Mr. Lynch has coached Little League for the past six years.

Conclusions of Law

1. Pursuant to RSA 287-D:2-b, VI, a game operator is prohibited from operating a games of chance if that person has been convicted of a felony or class A misdemeanor within the past 10 years or a class B misdemeanor within the past 5 years and that conviction has not been annulled by a court. This prohibition is subject to the provisions in RSA 287-D:8, II.
2. Pursuant to RSA 287-D:8, II, the Commission has the authority to determine eligibility and fitness for licensure.
3. The Commission determined that this was the only conviction that was reported by the NH State Police for Myles Lynch and that it occurred in May 2004.
4. The Commission determined that this was a domestic dispute.
5. Based on testimony given and information received, the Commission concludes, pursuant to RSA 287-D:8, II, that Myles Lynch is fit to be associated with games of chance therefore he is eligible for a secondary game operator license.

Order

The Commission orders that the denial of Myles Lynch's secondary game operator license be reversed.

Mr. Ronald Stratton Hearing

The Chairman opened the appeal hearing requested by Mr. Ronald Stratton relative to Rockingham Park Judges ruling #30 at 11:06 a.m. The Chairman swore in all those who were to testify. Testimony was received from:

Dale Childs, Racing Supervisor-Racing & Charitable Gaming Commission
Ronald Stratton-Trainer

The Chairman asked if anyone else had any testimony or evidence to offer. There was none. The Chairman closed the hearing relative to Rockingham Park Judges ruling #30 at 11:15 a.m.

Decision & Order **Appeal of Ronald Stratton** **Ruling #30** **Rockingham Park, Salem, NH**

Findings of Fact

1. Ronald Stratton is licensed in 2009 as a Trainer/Driver, license number 280156, at Rockingham Park by the New Hampshire Racing and Charitable Gaming Commission (Commission).
2. Ronald Stratton is the trainer of record for the horse "Aim For The Stars".
3. The horse "Aim for the Stars" was entered to race in the 8th race on June 20, 2009 and finished 1st.
4. Urine and blood samples were collected on June 20, 2009 from the horse "Aim for the Stars" following the finish of the 8th race, witnessed by Jerry Stratton.
5. The urine and blood samples collected from the horse "Aim for the Stars" were sent to the University of Florida Racing Laboratory for analysis at the end of the day on June 21, 2009.
6. The urine and blood samples collected from the horse "Aim for the Stars" were assigned tag number 555429.
7. The samples arrived at the Laboratory on June 23, 2009 with no security breach.
8. The urine samples taken from the horse "Aim for the Stars" were found to contain 30 nanograms per milliliter of flunixin, a class 4 drug according to the ARCI classifications.
9. After testing by the University of Florida Racing Laboratory, a letter dated July 03, 2009 was sent by Margaret H. Wilding, Associate Director, to the Commission.
10. The Board of Judges held a hearing regarding the flunixin findings at Rockingham Park.
11. The Board of Judges issued a "Notice of Suspension or Fine" dated July 12, 2009 assessing a penalty of \$250 fine and ordered the purse to be redistributed.
12. Ronald Stratton filed a request for an appeal hearing and stay dated July 15, 2009 with a \$100.00 bond.
13. A notice of appeal hearing was mailed to Ronald Stratton on July 30, 2009.
14. The Commission held an appeal hearing on August 25, 20089 at Rockingham Park in Salem, NH.
15. Dale Childs, Racing Enforcement Supervisor for the Commission provided testimony to the facts specified in the attached *Investigation Relative to Ruling #2009-30*.
16. Ronald Stratton provided testimony at the hearing stating that:
 - a. He loves and respects the industry and has been in the business for 45 years.
 - b. He has no prior medical infractions.
 - c. The drug Banamine ["flunixin"], a NSAID, was administered to the horse "Aim For The Stars" by a veterinarian.
 - d. The drug phenylbutazone ["bute"], a NSAID, was also administered to the horse "Aim For The Stars".
 - e. He did not realize that the usage of more than one NSAID was prohibited.

- f. If he had known the flunixin level was over the allowed limit, he would have withdrawn from the race.

Conclusions of Law

1. Pursuant to Pari 703.03(d), no substance may be given to a horse within 24 hours of a race.
2. Results from the urine samples tested by the University of Florida Racing Laboratory for the horse "Aim for the Stars" were positive for flunixin.
3. RSA 284:38-a, I, requires that the trainer of record be responsible for and the insurer of the condition of any kind of horse used for the purpose of racing.
4. Ronald Stratton, as the trainer of record for the horse "Aim for the Stars" is responsible for the positive tests for flunixin in violation of Pari 703.03(d).
5. Pursuant to RSA 284:38-a, II, "the Pari-Mutuel Commission through its judges . . . may impose . . . penalties on the trainer of record resulting from the condition of the horse . . . entered in a race failing to comply with the rules of the Commission.
6. **Based on testimony received, the Commission concludes that the order of finish of the race may have been affected by the substance flunixin.**
7. **Based on testimony provided, the Commission concludes that the level of flunixin was at a higher level than the generally accepted value in the racing industry.**

Order

1. The Commission orders that the loss of purse in Rockingham Park Judges ruling number 30 be upheld.
2. The Commission orders the penalty of \$250.00 fine in Rockingham Park Judges ruling number 30 be upheld.
3. The Commission finds that the appeal was not of a frivolous nature and orders the bond of \$100 returned.

Mr. Leopold Sawyer Hearing

The Chairman opened the appeal hearing requested by Mr. Leopold Sawyer relative to Rockingham Park Judges ruling #31 at 11:15 a.m. The Chairman swore in all those who were to testify. Testimony was received from:

Dale Childs, Racing Supervisor-Racing & Charitable Gaming Commission
Leopold Sawyer-Trainer

The Chairman asked if anyone else had any testimony or evidence to offer. There was none. The Chairman closed the hearing relative to Rockingham Park Judges ruling #31 at 11:21 a.m.

Decision & Order
Appeal of Leopold Sawyers
Ruling #31
Rockingham Park, Salem, NH

Findings of Fact

1. Leopold Sawyers is licensed in 2009 as a Driver/Trainer, license number 2210N1, at Rockingham Park by the New Hampshire Racing and Charitable Gaming Commission (Commission).

2. Leopold Sawyers is the trainer of record for the horse "What Not To Wear".
3. The horse "What Not To Wear" was entered to race in the 2nd race on June 21, 2009 and finished 2nd.
4. Urine and blood samples were collected, witnessed by Mr. Saywers, on June 21, 2009 from the horse "What Not To Wear" following the finish of the 2nd race.
5. The urine and blood samples collected from the horse "What Not To Wear" were sent to the University of Florida Racing Laboratory for analysis at the end of the day on June 21, 2009.
6. The urine and blood samples collected from the horse "What Not To Wear" was assigned tag number 555438.
7. The samples arrived at the laboratory on June 23, 2009 with no security breach.
8. The urine samples taken from the horse "What Not To Wear" were found to contain 73 nanaograms per milliliter of flunixin, a Class 4 drug according to the ARCI classifications.
9. After testing by the University of Florida Racing Laboratory, a letter dated July 03, 2009 was sent by Margaret H. Wilding, Associate Director, to the Commission.
10. The Board of Judges held a hearing regarding the flunixin findings at Rockingham Park.
11. The Board of Judges issued a "Notice of Suspension or Fine" dated July 12, 2009 assessing a penalty of \$250 fine and ordered the purse to be redistributed.
12. Leopold Sawyers filed a request for an appeal hearing and stay dated July 19, 2009 with a \$100.00 bond.
13. A notice of appeal hearing was mailed to Leopold Sawyers on July 30, 2009.
14. The Commission held an appeal hearing on August 25, 2009 at Rockingham Park in Salem, NH.
15. Dale Childs, Racing Enforcement Supervisor for the Commission provided testimony to the facts specified in the attached *Investigation Relative to Ruling #2009-31*.
17. Leopold Sawyers provided testimony at the hearing stating that:
 - a. He has been in the business for 35 years.
 - b. He has had one medical violation, for the use of Caffeine in 1988.
 - c. He inquired as to medication rules on his first day at Rockingham Park.
 - d. He requested a prescription for Banamine [Flunixin] and was told to administer the drug 24 hours before the race.
 - e. He administered the drug Banamine [Flunixin], a NSAID, to the horse "What Not To Wear".
 - f. He administered the drug Phenylbutazone [Bute], a NSAID to the horse "What Not To Wear".
 - g. He was not aware that the use of more than one NSAID was prohibited.

Conclusions of Law

1. Pursuant to Pari 703.03(d), no substance may be given to a horse within 24 hours of a race.
2. Results from the urine samples tested by the University of Florida Racing Laboratory for the horses "What Not To Wear" were positive for flunixin.
3. RSA 284:38-a, I, requires that the trainer of record be responsible for and the insurer of the condition of any kind of horse used for the purpose of racing.
4. Leopold Sawyers, as the trainer of record for the horses "What Not To Wear" is responsible for the positive tests for flunixin in violation of Pari 703.03(d).
5. Pursuant to RSA 284:38-a, II, "the Pari-Mutuel Commission through its judges . . . may impose . . . penalties on the trainer of record resulting from the condition of the horse . . . entered in a race failing to comply with the rules of the Commission.
6. **Based on testimony received, the Commission concludes that the order of finish of the race may have been affected by the substance flunixin.**
7. **Based on testimony provided, the Commission concludes that the level of flunixin was at a much higher level than the generally accepted value in the racing industry.**

Order

1. The Commission orders that the loss of purse in Rockingham Park Judges ruling number 31 be upheld.
2. The Commission orders the penalty fine of \$250.00 in Rockingham Park Judges ruling number 31 be upheld.
3. The Commission finds that the appeal was not of a frivolous nature and orders the bond of \$100 returned.

Mr. Todd Dubois Hearing

The Chairman opened the appeal hearing requested by Mr. Todd Dubois relative to Rockingham Park Judges ruling #55 at 11:21 a.m. The Chairman swore in all those who were to testify. Testimony was received from:

Dale Childs, Racing Supervisor-Racing & Charitable Gaming Commission
Todd Dubois -Trainer

The Chairman asked if anyone else had any testimony or evidence to offer. There was none. The Chairman closed the hearing relative to Rockingham Park Judges ruling #55 at 11:26 a.m.

Decision & Order **Appeal of Todd Dubois** **Ruling #55** **Rockingham Park, Salem, NH**

Findings of Fact

1. Todd Dubois is licensed in 2009 as a Driver/Trainer, license number 4710T7, at Rockingham Park by the New Hampshire Racing and Charitable Gaming Commission (Commission).
2. Todd Dubois is the trainer of record for the horse "Ask For Bliss".
3. The horse "Ask For Bliss" was entered to race in the 1st race on July 25, 2009 and finished 1st.
4. Urine and blood samples were collected, witnessed by Donna Dubois, on July 25, 2009 from the horse "Ask For Bliss" following the finish of the 1st race.
5. The urine and blood samples collected from the horse "Ask For Bliss" were sent to the University of Florida Racing Laboratory for analysis at the end of the day on July 26, 2009.
6. The urine and blood samples collected from the horse "Ask For Bliss" were assigned tag number 554094.
7. The samples arrived at the Laboratory on July 28, 2009 with no security breach.
8. The urine samples taken from the horse "Ask For Bliss" were found to contain concentration of 31 nanograms per milliliter of 2-[1-hydroxyethyl] promazine sulfoxide, which is a metabolite of Acepromazine, a tranquilizer, and a class 3 drug according to the ARCI classifications.
9. After testing by the University of Florida Racing Laboratory, a letter dated August 11, 2009 was sent by Margaret H. Wilding, Associate Director, to the Commission.
10. The Board of Judges held a hearing regarding the acepromazine findings at Rockingham Park.
11. The Board of Judges issued a "Notice of Suspension or Fine" dated August 16, 2009 assessing a 15-day suspension and ordered the purse to be redistributed.
12. Todd Dubois filed a request for an appeal hearing and stay dated August 16, 2009 with a \$100.00 bond.
13. A notice of appeal hearing was mailed to Todd Dubois on August 17, 2009.
14. The Commission held an appeal hearing on August 25, 2009 at Rockingham Park in Salem, NH.

15. Dale Childs, Racing Enforcement Supervisor for the Commission provided testimony to the facts specified in the attached Investigation Relative to Ruling #2009-55.
16. Todd Dubois provided testimony at the hearing stating that:
 - a. He does not have the drug at his farm.
 - b. The horse "Ask For Bliss" is lazy and there would be no reason to administer a tranquilizer to this horse.
 - c. The horse was trucked in to Rockingham Park.
 - d. The horse was left unattended for approximately one and a half hours in the shipping barn at Rockingham Park.
 - e. He did not administer the drug.
 - f. He did not request anyone else to administer the drug.
 - g. He has no knowledge as to how the drug was administered to the horse or by whom.
 - h. He would like to "get to the bottom of how the drug was given to his horse".

Conclusions of Law

1. Pursuant to Pari 703.03(d), no substance may be given to a horse within 24 hours of a race.
2. Results from the urine samples tested by the University of Florida Racing Laboratory for the horse "Ask For Bliss" were positive for acepromazine.
3. RSA 284:38-a, I, requires that the trainer of record be responsible for and the insurer of the condition of any kind of horse used for the purpose of racing.
4. Todd Dubois, as the trainer of record for the horses "Ask For Bliss" is responsible for the positive tests for acepromazine in violation of Pari 703.03(d).
5. Pursuant to RSA 284:38-a, II, "the Pari-Mutuel Commission through its judges . . . may impose . . . penalties on the trainer of record resulting from the condition of the horse . . . entered in a race failing to comply with the rules of the Commission.
6. **Based on testimony received, the Commission concludes that the order of finish of the race may have been affected by the substance acepromazine.**
7. **Based on testimony provided, the Commission concludes that the level of acepromazine was at a much higher level than the generally accepted value in the racing industry.**

Order

1. The Commission orders that the loss of purse in Rockingham Park Judges ruling number 55 be upheld.
2. The Commission orders the 15 day suspension in Rockingham Park Judges ruling number 55 be upheld.
3. The Commission finds that the appeal was not of a frivolous nature and orders the bond of \$100 returned.

With the hearings closed, the Chairman moved forward to the other items on the agenda.

On a motion by Commissioner Urban, seconded by Commissioner Streeter and unanimously voted to approve and place on file the Commission minutes dated July 20, 2009.

On a motion by Commissioner Leary, seconded by Commissioner Urban and unanimously voted to accept and place on file the racing & charitable gaming statistics for the fiscal period ending August 15, 2009.

The Games of Chance warning letters spreadsheet were reviewed. Deputy Director Naik stated all items were now up to date. On a motion by Commissioner Leary, seconded by Commissioner Streeter and unanimously voted to accept and place on file.

The Games of Chance State Revenue spreadsheets were reviewed. On a motion by Commissioner Urban, seconded by Commissioner Streeter and unanimously voted to accept and place the spreadsheets on file.

Copies of the positive test result letters from the University of Florida were included in the agenda packet. On a motion by Commissioner Urban, seconded by Commissioner Streeter and unanimously voted to accept and place them on file.

A copy of the Harness Notice of Suspensions and Fines spreadsheet was included in the agenda packet. On a motion by Commissioner Leary, seconded by Commissioner Urban and unanimously voted to accept and place them on file.

For informational purposes, the Title XXIV Games, Amusements, and Athletic Exhibitions—Chapter 287-D Games of Chance Section 287-D:6 was included in the agenda packet. Director Kelley pointed out that this document provides the statutory authority to fine or suspend participants involved in Games of Chance. On a motion by Commissioner Leary, seconded by Commissioner Urban and unanimously voted to accept and place on file.

The Summary of Account Wagering Account Balances was reviewed. On a motion by Commissioner Urban, seconded by Commissioner Streeter and unanimously voted to accept and place on file.

Director Kelley informed the Commission that he had a conversation with Mr. John Feola, President of New Vision Gaming. New Vision Gaming is trying to introduce a new game to NH, Headstart Hold'em Bonus. Based on the research done by the auditors, Director Kelley informed Mr. Feola that only the state legislature could approve the introduction of this game in NH. Mr. Feola informed the Director that he will pursue legislative changes. On a motion by Commissioner Urban, seconded by Commissioner Streeter and unanimously voted to accept and place on file the auditors' findings. The auditors were thanked for a job well done.

Discussion followed on United Tote's request to eliminate the requirement for onsite tote personnel during simulcast operations at The Lodge at Belmont. On a motion by Commissioner Leary, seconded by Commissioner Streeter and unanimously voted to approve the request for a 6-month trial period. At the end of 6 months, the Commission will revisit the request.

On a motion by Commissioner Urban, seconded by Commissioner Leary and unanimously voted to accept and place on file copies of two agreements between Rockingham Gaming and Granite State Poker dated August 2, 2009 and July 27, 2009.

Correspondence was reviewed. Copies of two separate incident reports that occurred at Rockingham were provided for informational purposes.

There was no Old Business.

Under New Business:

- ❖ Mr. Jim Armand approached the Commission requesting to be heard on an incident which occurred on August 15th. On a motion by Commissioner Presby, seconded by Commissioner Urban and unanimously voted to assign the matter to staff for resolution.
- ❖ Mr. Rick Newman, representing The Lodge at Belmont, asked the Commission if they would officially agree that historical racing terminals are in fact a form of pari-mutuel wagering. Discussion followed. On a motion by Commissioner Presby, seconded by Commissioner Leary and unanimously voted to ask staff to research how the states of Alabama, Arkansas and Florida came to the determination that these terminals are pari-mutuel wagering; to contact the states of Oregon and/or Wyoming to determine why the terminals were eventually found to be non pari-mutuel wagering. The findings will be presented at the next Commission meeting.
- ❖ A subcommittee will be formed to work with Mr. James Rafferty to determine if the game of NH Hold'em can be operated legally in NH. Commissioners Gatsas and Streeter have volunteered for the subcommittee. The first meeting will be held sometime after Labor Day.
- ❖ A consensus was reached by the Commission that the Casino Game Rental audit hearing be cancelled and the internal administrative audit findings be used by staff as a guide to work with the primary game operators to help them identify issues that commonly occur and ways to resolve them.

At 12:00 noon, on a motion by Commissioner Urban, seconded by Commissioner Streeter and by a unanimous roll call vote the Commission voted to adjourn the regular meeting, and go into non-public session.

Connors	-	Yes
Leary	-	Yes
Gatsas	-	Yes
Urban	-	Yes
Presby	-	Yes
Streeter	-	Yes

At 1:10 p.m., on a motion by Commissioner Leary, seconded by Commissioner Streeter and by a unanimous roll call vote the Commission voted to come out of the non-public session and to permanently seal the non-public minutes.

Connors	-	Yes
Leary	-	Yes
Gatsas	-	Yes
Urban	-	Yes
Presby	-	Yes
Streeter	-	Yes

The next Commission meeting is scheduled for Monday, September 28th at 11:00 a.m. in Concord.

The Chairman closed the public meeting at 1:15 p.m.

Respectfully Submitted,

Warren W. Leary
Secretary